STATE OF MICHIGAN
IN THE SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

LISA ROBERTS,

Plaintiff-Appellee,

v

MECOSTA COUNTY GENERAL HOSPITAL

Defendant-Appellant,

and

GAIL A. DESNOYERS, MD, MICHAEL ATKINS, MD BARB DAVIS and OBSTETRICS AND GYNECOLOGY OF BIG RAPIDS PC, f/k/a GUNTHER, DESNOYERS & MEKARU,

Defendants.

Supreme Court No. 122338
Court of Appeals No. 212675
Mecosta County No. 97-012006-NH

BRIEF ON APPEAL OF APPELLANT MECOSTA COUNTY GENERAL

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INTRODUCTION

This matter returns to the Supreme Court following a decision of the Court of Appeals on earlier remand from this Court. The Court of Appeals has now held that plaintiff's Notices of Intent met the literal requirements of the Notice of Intent statute -- MCL 600.2912b(4). Earlier, the Circuit Court held that these notices did not contain the required information. Having failed to meet the minimum requirements of the NOI provision, the notices did not toll the statute of limitations. The Court of Appeals has now reversed, saying that the notices did contain the statutorily required information.

Defendants contend that the Court of Appeals has again erred in this case. Plaintiff's notices did not provide even the least of the information required by the statute. This brief addresses why that is so, with respect to plaintiff's notice to the hospital.

Plaintiff has also argued that her notices "substantially complied" with the NOI statute, and that substantial compliance, whatever that might be, sufficiently fulfills her statutory obligation. Defendants contend that the statute, by its very wording, prohibits the "substantial compliance" for which she argues. This Court's order granting leave directs the parties to brief this issue of "...whether strict compliance or some lesser standard of compliance applies to plaintiff's notice of intent under [NOI provision]." This brief, then, addresses that issue as well.

STATEMENT OF QUESTIONS PRESENTED

I. **WHETHER PLAINTIFF'S NOTICE OF INTENT WAS IN LITERAL COMPLIANCE WITH THE REQUIREMENTS OF MCL 600.2912b?**

The plaintiff says, "Yes."

The Circuit Court said, "No."

The Court of Appeals said, "Yes."

The defendants say, "No."

II. **WHETHER "SUBSTANTIAL COMPLIANCE" WITH THE REQUIREMENTS OF MCL 600.2912b IS SUFFICIENT FOR PLAINTIFF TO HAVE THE BENEFIT OF THE TOLLING STATUTE (MCL 600.5856)?**

The plaintiff says, "Yes."

The Circuit Court said, "No."

The Court of Appeals did not address this question.

The defendants say, "No."

STATEMENT OF FACTS

1. The Notice of Intent Statute.

The notice of intent requirement for medical malpractice actions is set forth in MCL 600.2912b. The statute requires that the notice contain the following information:

> (4) The notice given to a health professional or health facility under this section **shall** contain a statement of **at least all** of the following:
>
> (a) The factual basis for the claim.
>
> (b) The applicable standard for practice alleged by the claimant.
>
> (c) The manner in which it is claimed that the applicable standard of practice or care was breached by the health professional or health facility.
>
> (d) The alleged action that should have been taken to achieve compliance with the alleged standard of practice of care.
>
> (e) The manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the Notice.
>
> (f) The names of all health professionals and health facilities the claimant is notifying under this section in relation to the claim. (emphasis added)

2. The Tolling Statute.

MCL 600.5856 tolls the limitations period following service of a notice of intent in the proper case:

> The statutes of limitations or repose are tolled:
>
> If, during the applicable notice period under section 2912b, a claim would be barred by the statute of limitations...for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in compliance with section 2912b. (emphasis added)

3. The Plaintiff's Notice of Intent.

The plaintiff's Amended Notice of Intent to the Mecosta County General recited the following as the factual basis for her claim:

1. FACTUAL BASIS FOR CLAIM

This is a claim for negligence which occurred on October 4, 1994, at Mecosta County General Hospital. It is claimed that on said date which pregnant with her first child, claimant presented herself to Mecosta County General Hospital complaining of severe pain. At that time a diagnosis of spontaneous abortion was made and a D and C was performed. Claimant was sent home at that time.
Over the course of the next few days Claimant continued to experience pain and cramping and, on October 7, 1994, was again seen at Mecosta County General Hospital. Claimant was told that the pain she was experiencing was cramps from the D and C she had done and was sent home.

Claimant returned to the hospital on October 8, 1994, wherein it was discovered that Claimant had not had a spontaneous abortion but had an ectopic pregnancy in her left tube which had burst. Emergency surgery was performed at that time and her left tube was removed.

Claimant had her right tube removed approximately ten years ago and, as a result of the negligence set forth above, she is now unable to have any children.

As for the alleged standard of care, her notice said:

2. THE APPLICABLE STANDARD OF PRACTICE OR CARE ALLEGED

Claimant contends that the applicable standard of care required that Mecosta County General Hospital provide the Claimant with the services of competent, qualified and licensed staff of physicians, residents, interns, nurses and other employees to properly care for her, render competent advice and assistance in the care and treatment of her case and to render same in accordance with the applicable standards of care.

As for the remaining information required by the statute, her notice provided virtually nothing at all:

3. THE MANNER IN WHICH IT IS CONTENDED THAT THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED

See paragraph 2 above.

4. THE ACTION THAT SHOULD HAVE BEEN TAKEN TO ACHIEVE COMPLIANCE WITH THE STA NDARD OR PRACTICE OR CARE

See paragraph 2 above

5. THE MANNER IN WHICH THE BREACH WAS THE PROXIMATE CAUSE OF CLAIMED INJURY.

See paragraph 2 above.

6. NAMES OF HEALTH PROFESSIONALS, ENTITIES, AND FACILITIES NOTIFIED MECOSTA COUNTY GENERAL HOSPITAL AND ALL AGENTS AND EMPLOYEES, ACTUAL OR OSTENSIBLE, THEREOF.

Mecosta County General Hospital and all agents and employees actual or ostensible, thereof.

4. <u>The Plaintiff's Complaint.</u>

The plaintiff's complaint and affidavit of merit set forth approximately 15 specific allegations of breaches of the standard of care. (See paragraph 69 of plaintiff's Complaint, Appendix 91a-93a) The complaint does not clearly state whether the plaintiff alleges the Hospital should be vicariously liable or directly liable for the independent acts of negligence listed in paragraph 69.

The plaintiff alleges that her obstetrician, Dr. Mekaru, sent her to the Hospital for an ultrasound on October 4, 1994, and that she was admitted to the hospital on that same date for performance of a D&C by defendant, Dr. Desnoyers. (Plaintiff's Complaint, paragraphs 38 and 42, Appendix 87a-88a) She alleges further that she was discharged from the hospital in the evening following the D&C operation. (Complaint, paragraph 49, Appendix 88a)

She claims that on October 7, 1994, she felt dizzy, had difficulty breathing, and passed out. She was taken by ambulance to the hospital where she was seen by defendant, Dr. Atkins, an emergency room physician. (Complaint, paragraphs 50-52, Appendix 89a) She was discharged from the emergency room that evening, but she claims that she continued to have breathing difficulty and abdominal pain on October 8, 1994, and she was again taken to the hospital by ambulance. (Complaint, paragraphs 54-57, Appendix 89a) She was attended to by Dr. Gunther, her gynecologist, who performed a left salpingectomy for a ruptured left ectopic pregnancy. (Complaint, paragraphs 59-60, Appendix 89a-90a)

The plaintiff alleges in complaint paragraph 67 that the hospital had a duty to "provide care and treatment to plaintiff," and further "had a duty to exercise reasonable care for the safety of Lisa Roberts and to treat her in a non-negligent manner." (Complaint, paragraph 67, Appendix 91a) Detailed allegations are set forth in paragraph 69 of the Complaint, sub-paragraphs A-R, but the complaint does not make clear which of those specific allegations are meant to apply to the hospital.

In any event, the breaches alleged in the complaint were not listed in the Notice of Intent. The notice of intent claims of the Hospital only that it failed to provide competent and qualified physicians, residents, interns, and nurses to render appropriate and competent care to the plaintiff. The complaint contains no allegation that the Hospital negligently granted staff privileges to the defendant physicians or to any other health care providers, for that matter.

5. The Decisions of the Circuit Court.

The Hospital and defendant Atkins moved for summary disposition. The Court granted the motion for the reason that the Notices of Intent were insufficient to fulfill the statutory requirements, and , as a consequence, they did not toll the statute of limitations. With regard to the notice to the Hospital, the judge had this to say:

> ...[T]he statute under subsection 4 requires a minimum listing of things that must be included in a notice. The factual basis seems to be appropriate. The applicable standard of care or practice alleged by the claimant, as I read it against the Hospital, is simply basically to avoid negligent hiring practices. I think it would be stretching to read into that a respondeat superior type of theory.
>
> The problem the plaintiff runs into is when we get to paragraphs 3, 4, and 5. They simply reference paragraph 2.. For example, paragraph 3 under the notice addresses, and I'll quote: The manner in which it is contended that the applicable standard of practice or care was breached. It says, see paragraph 2 above. Paragraph 2 simply sets out the claimed applicable standard of care or practice. It does not how it was breached; for example, how the Hospital would have been negligent in hiring or how any of its staff were negligent such that might give rise to a claim against the Hospital even under respondeat superior.
>
> Even if I read paragraphs 1 and 2 together; basically, under paragraph 1, we have a bad result alleged. Paragraph 2 says what I've already indicated it to say. To read paragraph 1 and 2 together does not establish a claim of a breach of the standard of care.

Similarly, paragraph 4, which addresses, quoting, the action that should have been taken to achieve compliance with the standard of practice or care, that apparently a paraphrasing of section 4D of the statute, simply incorporates paragraph 2 above. The analysis is the same. Incorporating that paragraph doesn't indicate what should have been done, except perhaps a reverse of what was claimed done. And that I believe is insufficient.

Paragraph 5, quoting: The manner in which the breach was the proximate cause of the claimed injury. Paragraph 2 is simply incorporated by reference. That apparently is an attempt to satisfy Section 4E of the statute. It's insufficient. There, again, all we have is a claim of a bad result, a very general claim of negligent hiring, and perhaps even more generally, if even existent, the claim of respondeat superior. No indication is given of the proximate cause.

While I believe the Court can construe the requirements of the statute more liberally than it would the pleading requirements under the Court Rules, which I recognize are a separate creature, I believe that this notice is facially insufficient under the statute. Therefore, there is no notice. For that reason, the statute of limitations has not been tolled, has run, and the action is barred by the statute of limitations. Summary disposition is granted.

(Hearing Transcript, 8/22/97, pp. 19-21,28, Appendix 115a-117a, 124a)

The remaining defendants then filed a similar motion, and in the meanwhile the plaintiff moved for reconsideration of the order as to the Hospital and Atkins. The Circuit Court granted reconsideration and withheld ruling on the subsequent motion of the other defendants. It ruled then on reconsideration, and at the same time on the summary disposition motion of the other defendants, upholding its earlier summary disposition and granting summary disposition to the other defendants. (Circuit Court Opinion, May 6, 1998, Appendix 23a-33a)

In doing so, the Court rejected each of the plaintiff's arguments. It held:

1. The defendant need not show actual prejudice to seek remedy for lack of proper notice;

2. The notice of intent statute is not unconstitutional;

3. "Substantial compliance" is not a valid exception to the unambiguous requirements of the notice of intent statute;

4. Dismissal of the plaintiff's complaint is the proper remedy for non-compliance with the notice of intent statute.

6. The Decision of the Court of Appeals.

The Court of Appeals has now reviewed plaintiff's Notices of Intent for their compliance with each of the statute's subparts. The Court concluded in turn with respect to each that the notices provided the required information. The Court acknowledged that the notices given "may not represent the picture of clarity," nor did they represent the "perfect notice." It said, however, that they were not inadequate. (Court of Appeals decision, 8/27/02, Appendix 74a-79a)

ARGUMENT

I. PLAINTIFF'S NOTICE OF INTENT WAS NOT IN LITERAL COMPLIANCE WITH THE REQUIREMENTS OF MCL 600.2912b.

Plaintiff's Notice of Intent merely informs the defendant Hospital that it breached some standard of care because it failed to provide:

> [T]he services of competent, qualified and licensed staff of physicians, residents, interns, nurses and other employees to properly care for [plaintiff], render competent advice and assistance in the care and treatment of her case and to render same in accordance with the applicable standards of care.

When plaintiff later filed her Complaint and Affidavit of Meritorious Claim, on the other hand, she set forth approximately 15 specific allegations of breaches of the standard of care. (See Complaint paragraph 69) The Complaint leaves unclear whether plaintiff claims the Hospital was only vicariously liable for alleged physician negligence, or whether plaintiff claims the Hospital is directly liable for independent acts of negligence. In any event, the alleged breaches listed in the Complaint were not provided, in any way, in the Notice of Intent. Comparison of the Complaint to the Notice of Intent shows this — No matter how generously one might wish to interpret and extrapolate from the cursory contents of plaintiff's notice, the notice does not encompass the claims that she advanced later in her Complaint.

According to the Notice of Intent, the claim plaintiff was to make against the Hospital was this — failure to provide competent and qualified physicians, residents, interns, and nurses to render appropriate and competent care to the plaintiff. The later Complaint, however, contains no claims that the Hospital negligently granted staff privileges to the defendant physicians or any other health care provider, for that matter.

Looking to the claims in plaintiff's Complaint, it is clear that her notice did not address:

(c) The manner in which it is claimed that the applicable standard of practice or care was breached by the health professional or health facility.

(d) The alleged action that should have been taken to achieve compliance with the alleged standard of practice of care.

(e) The manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the Notice. (MCL 600.2912b)

The statute says that the Notice of Intent "shall" contain a statement of "at least all " of the listed subparts. Hence, the language is expressly mandatory, and it requires that the notice contain no less than the listed items of information. A prospective plaintiff could offer more, and he or she might want to do so, to make best use of the notice for its intended purpose — as a platform for pre-suit settlement talks. What is entirely clear from the statute, however, is this -- it sets the floor for minimum disclosures. The plaintiff may provide more information than required, but he or she may not provide any less.

Plaintiff's notice to the Hospital gave less than required. It did not contain statements answering subparts (c), (d), or (e). Her Notice of Intent fell short of literal compliance with section 2912b, and she was not entitled to the benefit of tolling. The Circuit Court properly granted summary disposition.

II. THE REQUIREMENTS OF THE NOTICE OF INTENT STATUTE ARE NOT SATISFIED BY "SUBSTANTIAL COMPLIANCE."

A. The statutory command is clear and unambiguous and should be applied by the Court as written.

Plaintiff argues that her notice gave enough information for the Hospital to know what the claim was about. She argues, essentially, that her notice "substantially complied" with MCL 600.2912b. She contends that the Court should interpret "compliance" in the tolling statute, where it allows tolling when the Notice of Intent is given in compliance with §2912b, to permit "substantial compliance."

The Court must reject this invitation, because it is legally impermissible. The statutory command is clear and unambiguous. It offers no ambiguities that might favor substantial compliance. The statute contains no language suggesting that less than full compliance is sufficient. In fact, the particular

language of the statute excludes any thought of substantial compliance, as it mandates inclusion of "at least" the specified disclosures.

The statute says that a person "shall not commence" a medical malpractice action "unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced." The statute then goes on to state specifically what must be included in the "written notice under this section." As discussed in the preceding argument section, §2912b is very explicit. The command is clear and mandatory. The notice "shall" contain "at least" the listed items of information. Plaintiff's argument that less is satisfactory, as "substantial compliance," would violate the Legislature's unambiguous language.

Moreover, judicial construction of this language to permit "substantial compliance" is not permissible under ordinary rules of statutory construction. One well recognized rule is that judicial construction of plainly stated and unambiguous statutory language is unnecessary and, therefore, precluded. In Arrigo's Fleet Service, Inc v State of Michigan, 125 Mich App 790, 792; 337 NW2d 26 (1983), the Court of Appeals relied upon earlier Supreme Court precedent and concluded that there may be no judicial construction of plainly stated legislation:

> It is perhaps the most fundamental rule of statutory construction that the Legislature must be presumed to have intended the plain meaning of the words used in the statute and that when the meaning of the words used is clear and unambiguous, judicial construction or interpretation which changes that meaning is not permitted. MacQueen v Port Huron City Commission, 194 Mich 328, 342; 160 NW 627 (1916).

This principle of construction applies, even if the court might think that the Legislature intended something other than what it has stated in the statute. In George v International Breweries, Inc, 1 Mich App 129, 132; 134 NW2d 381 (1965), the Court said:

> We decline to read into Section 45 a meaning other than that expressed by its language. We follow the rule of law frequently quoted from People v Lowell (1930), 250 Mich 349, 359: 'Even though the court should be convinced that some other meaning was really intended by the law-making power, and even though the literal interpretation should defeat

> the very purposes of the enactment, still the explicit declaration of the legislature is the law, and the courts must not depart from it.'

The rule was applied by the Supreme Court in Lorencz v Ford Motor Co, 439 Mich 370, 376-377; 483 NW2d 844 (1992). Citing a number of prior cases, the Court said, "When a statute is clear and unambiguous, judicial construction or interpretation is unnecessary and therefore, precluded...."

That rule of construction applies with no less force to the notice statute at issue in this case. The notice provision is clearly stated. It needs no interpretive gloss. The statute says that the notice must give certain specific information regarding the proposed claim. It states that a prospective plaintiff's Notice of Intent "shall" contain "at least" the listed items of information. There is no cause for the Court to add to the language of the statute to permit "substantial" compliance. The statute must be applied as written.

B. The cases upon which the plaintiff relies to support her "substantial compliance" argument are not appropriate for interpretation of the Notice of Intent statute.

The plaintiff has relied on several cases to say that substantial compliance with a notice statute is enough. On careful review, however, the Court will see that those cases address notices of a different sort than the one in question here, and the notice provisions in those cases have a far different purpose. While substantial compliance with the technical notice requirements in those cases might fulfill the Legislature's intent, the same is not true here.

The plaintiff has earlier relied primarily upon Meredith v City of Melvindale, 381 Mich 572; 165 NW2d 7 (1969). That case involved a claim against a municipality for negligence with regard to a playground. The defendant municipality claimed that the plaintiff had not provided notice in full compliance with the requirements, within a certain length of time after the accident, as a prerequisite for a later lawsuit.

The Court held that substantial compliance with the notice requirements was enough. The Supreme Court noted the following reasons for its conclusion. First, the municipal charter provision in question was designed to give authorities sufficient information as to "direct them to the sources of

information that they conveniently may make an investigation." The courts have been, they said, fairly liberal as to these sorts of notice requirements, so long as the notice tends in that direction and is not misleading. The Court went on to say: "This judicial policy favoring a liberal construction is based on the theory that the inexpert layman with a valid claim should not be penalized for some technical defect." Meredith, 579.

The same considerations do not apply to the Notice of Intent in medical malpractice cases, primarily because they serve a different purpose. The purpose of the notice in the municipal claim cases was to insure that the defendant would know of a coming claim so that it could conduct an early, fresh investigation of its own for a later defense. That purpose is served by a fairly simple notice. It would be unfair, the courts have concluded, to enforce technicalities of the notice requirement, where the municipality had, in fact, gotten sufficient notice to fulfill the purpose for the notice requirement.

A far different purpose is served by the medical malpractice Notice of Intent requirement. Plaintiff is permitted to serve this notice as late as the eve of the running of the statute of limitations. Obviously, this notice has no purpose to facilitate fresh investigation near the time of the incident.

The Legislature has provided for the Notice of Intent in medical malpractice cases so that potential defendants will be told the specifics of the plaintiff's claim, before suit is filed. The Legislature intends that defendants will then have full opportunity for evaluation and settlement of claims prior to suit. That purpose is secured only if the plaintiff fully complies with the notice statute by providing all of the required information. That purpose is thwarted if the plaintiff only "substantially" complies and saves much of the required information for later surprise after a lawsuit is filed.

The Notice of Intent statute sets forth very specific requirements for information that must be supplied. The Legislature obviously intends that the plaintiff disclose at least the essential elements of his or her malpractice claim, holding nothing back. If the Courts approve "substantial compliance," that

would serve as an excuse to avoid the clear legislative intent. Allowing "substantial compliance" would virtually write the specifics of the notice requirement out of the statute.

The Court should be mindful of the fact that literal compliance with the statute is no great obstacle to legitimate medical malpractice claims. The notice statute requires the plaintiff to provide information on each of the necessary elements of the proposed claim. If a prospective plaintiff does not possess even the barest understanding or belief as to the existence of one of these elements, he or she has no business offering a claim, or even notice of intent to make one.

After all, the notice can be served as late as the eve of the running of the statute of limitations. The Legislature legitimately expects that prospective plaintiffs would, by then, have a reasonable belief in the existence of each of the necessary elements their claim. The Legislature merely requires them to articulate those beliefs. If a prospective plaintiff honestly believes that he or she has a legitimate claim, with all of its necessary elements, that claimant should be ready, willing, and fully able to give a fully compliant notice.

In summary, the Court must not approve "substantial compliance" as a fulfillment of the Notice of Intent statute. The authorities upon which the plaintiff will likely rely do not apply to this notice statute. Approving "substantial compliance " would thwart the clear legislative intent.

C. The Court of Appeals has already rejected the "substantial compliance" argument in Rheaume v Vandenberg.

Indeed, the Court of Appeals has already rejected the plaintiff's "substantial compliance" argument in the case of Rheaume v Vandenberg, 232 Mich App 417, 591 NW2d 331 (1998), lv denied, 604 NW2d 678 (1999). The Court held that a plaintiff's complaint was properly dismissed on statute of limitations grounds. The plaintiff relied on tolling following a notice of intent. The Court said:

> Plaintiffs contend that substantial compliance with the requirements of §2912b resulting in actual notice to the defendant is sufficient to toll the statute of limitations under MCL 600.5856(d); MSA 27A.5856(d). Resolution of this case turns on issues of statutory interpretation. The goal of statutory interpretation is to identify and to give effect to the

> intent of the Legislature. Turner v Auto Club Ins. Ass'n, 448 Mich 22,27; 528 NW2d 681 (1995); Farrington v Total Petroleum, Inc., 442 Mich 201; 501 NW2d 76 (1993). The first step in ascertaining such intent is to focus on the specific language of the statute. Turner, supra at 27. The Legislature is presumed to have intended the meaning it plainly expressed. McFarlane v McFarlane, 223 Mich App 119, 123; 566 NW2d 297 (1997). Accordingly, if the plain language of the statute is clear and unambiguous, further judicial construction is not permitted, and the statute must be applied as written. Turner, supra at 27; Lorencz v Ford Motor Co, 439 Mich 370, 376; 483 NW2d 844 (1992).
>
> The language of MCL 600.5856(d); MSA 27A.5856(d) clearly provides that the statute of limitations is tolled if the notice of intent to sue is given "in compliance with section 2912b." (Emphasis added.) The negative implication of this section is that the statute of limitations is not tolled if the notice of intent to sue does not comply with §2912b. The Legislature's use of the word "shall" in subsection 4 of §2912b makes mandatory the inclusion of the "names of all health professionals" notified of an intention to sue. See, e.g., In re Hall-Smith, 222 Mich App 470, 472; 564 NW2d 156 (1997)(explaining the use of the word "shall" indicates a mandatory, rather than a discretionary, provision.) When understood in its plain and ordinary sense, the word "name" does not encompass the broad description of defendant Vandenberg that was included in the sixth paragraph of plaintiffs' notice of intent to sue. This is so even when that broad description is considered in conjunction with the more specific factual description included in paragraph one of the notice. Simply put, a description is not a name. Because the specific statutory language of §2912b is clear and unambiguous, we are bound to apply it as written. By failing to include defendant Vandenberg's "name" in their notice of intent to sue, plaintiffs failed to comply with a specific mandatory requirement of §2912(4). Therefore, the statute of limitations was not tolled pursuant to MCL 600.5856(d); MSA 27A.5856(d), and plaintiffs' complaint naming Vandenberg as a defendant was not timely filed. Rheaume, 3-4.

Indeed, the Court of Appeals has already held, then, in a published decision that "substantial compliance" is insufficient to fulfill the statutory requirements for a Notice of Intent, and that the non-complying notice does not toll the running of the statute of limitations. Applying that holding to this case, the Circuit Court properly held that the plaintiff's alleged "substantial compliance" did not toll the statute, and that the complaint was therefore untimely. The Court of Appeals was right on this issue in its decision in Rheaume.

D. Lastly, even if "substantial compliance" was enough, the Court would have to define it; and having done that, the Court would see that plaintiff did not substantially comply anyway.

"Substantial compliance" would have to mean that although the plaintiff did not comply with the required form of the notice, she has complied in substance; that is, by having somehow conveyed the substance of the required disclosures. For all of the reasons stated above in Argument I, plaintiff did not disclose the necessary substance of her claim in this case. In short if substantial compliance is permissible, plaintiff did not substantially comply.

RELIEF REQUESTED

For all of the foregoing reasons and authorities, the defendant, Mecosta County General Hospital, respectfully requests that the Court reverse the decision of the Court of Appeals, and that it reinstate the decision o f the Circuit Court, and that defendant be awarded its costs and fees incurred herein.

DATED: May 19, 2003

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